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24 January 2012

## The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era

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24 June 2010

False dawns and uneasy peace

Helen Fenwick on a useful review of the ailing state of UK civil liberties, from common law to kettling

This is an opportune moment to publish a book on peaceful protest in the UK. It comes in the wake of the infamous G20 protests in central London in 2009, the arrest of peace protester Brian Haw in Westminster last month, and at a moment when the new government, in its coalition agreement, has promised the restoration of rights to non-violent protest.

The book's subtitle is in one sense more telling than its main one: David Mead sets out to document the vast, overlapping web of laws currently used to curb protest, painting a bleak picture alleviated only by the spasm of anti-authoritarianism that briefly afflicted the Blair government in its pre-9/11 "new dawn" period, leading to the passing of the Human Rights Act. The "new" law of peaceful protest stems from Articles 10 and 11 of the European Convention on Human Rights, protecting expression and assembly, as received into domestic law via that Act.

In practice, as the book acknowledges and explores, especially in the first chapter, the ailing state of peaceful protest in this country can be traced mainly to the impact of policing decisions on the ground, and sometimes to low-level decisions in magistrates' courts in which human rights-based arguments have limited leverage. The keynote of the many provisions available is that of maximising police discretion: the law is littered with expressions such as "disruption of the life of the community" or "reasonableness".

Broadest of all - and unfortunately not a candidate for a Great Repeal Bill - is the wonderfully vague common-law doctrine of breach of the peace, the doctrine that underpinned the technique of "kettling", notoriously used by police in the G20 demonstrations to "contain" protesters. It deserves, and receives, as a curiosity of ancient origin that unsurprisingly figures largely in the modern policing of protest, a long section to itself in chapter seven.

But the exploration of the changing protest landscape provides the book with its impetus: its strength lies in its insightful discussion of the Strasbourg case law on protest, setting the scene for the attempt to find points of synthesis between such law and the range of public order provisions introduced over the past 40 years. Its main enterprise is to examine the law and practice of protest in terms of the locus of protest, the forms of protest affected and restraints available, in the light of the normative framework provided by the Strasbourg jurisprudence. Of particular interest is its exploration of the interaction between "public" protest and the private sphere, including the use of private law remedies against protesters by public and private bodies.

Occasionally the thread of the argument becomes a little overwhelmed by the detail. Nevertheless, its main thesis - that the web of laws explored can be and is being affected by the new domesticisation of the right of peaceful protest - animates the various chapters with a reasonable, if variable, degree of vigour, although under that thesis, the discussion of the key Strasbourg concept of proportionality in chapter three requires a more precise and detailed exploration.

Its stance in relation to the new recognition of a right of protest is based in part on the liberal idea of viewing the judiciary as the guardians of liberty, receptive to the enterprise of infusing UK case law with Strasbourg principles, emanating from an increasingly activist court. The timidity of the judiciary, or its outright embrace of police evaluations of the powers they need to curb protest, as evidenced by the judge-made breach of the peace power, and in particular its condoning of kettling in the 2009 case of *Lois Austin*, is in some tension with this thesis. It would have been helpful for the introduction and conclusion to go further in clarifying the book's overarching thesis, with judicial deference to policing decisions on the ground fully in mind.

But the final assessment of this book must be that it constitutes a well-researched, highly detailed, valuable, gap-filling contribution to the canon of literature on civil liberties and human rights, and one that should be recommended to students and researchers in this and related disciplines. It is the first book of its kind to explore the current law affecting protest in this comprehensive way against the backdrop of human rights norms. It reflects the growing proliferation of books in this field: as it became ever more complex, due to the introduction of the Human Rights Act and the seemingly insatiable appetite of governments for introducing further and overlapping criminal justice and anti-terrorism legislation, so the need for books covering specialised areas, such as protest, increased.

In accordance with its ambition, Mead's book is an accessible and highly stimulating venture into an area of great contemporary significance.

### **The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era**

By David Mead  
Hart Publishing, 530pp, £45.00  
ISBN 9781841136219  
Published 6 April 2010

Reviewer :

Helen Fenwick is professor and co-director of the Human Rights Centre, Durham Law School, Durham University.

## **Readers' comments**

- **Cek kanunu** 9 January, 2012

The consideration of the ECHR is a bigger issue than just the Human Rights Act though. An obligation to comply with the Convention is inherent in the devolved settlements – and failure to do so means the devolved governments and legislatures will act ultra vires. Any serious consideration of the issue must take the devolved legislatures into account – and bear in mind the legislative consent motions that would have an impact on any attempts to tamper with those devolved settlements. <http://www.cekmagdurlari.com/>

- **CekYasasi** 9 January, 2012

I would contend that the Parliamentary Voting System and Constituencies Act 2011 is an example of non compatibility with the HRA in so far as it excluded prisoners from voting. Çek magdurlari

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